

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re Actos End Payor Antitrust Litigation

1:13-cv-09244 (RA) (SDA)

**In Re Actos Direct Purchaser Antitrust
Litigation**

1:15-cv-03278 (RA) (SDA)

ORDER

STEWART D. AARON, United States Magistrate Judge:

Before the Court is Plaintiffs' Motion to Set a Date by which Takeda Must Decide Whether It Will Rely on a "Regulatory Justification" Defense. (Plaintiffs' Motion, 15-CV-03278 ECF No. 183.)¹ As Takeda notes, the precise issue before the Court is the date by which Takeda must decide whether it will rely on an advice of counsel defense. (See Opp. Mem. at 1 n.1.) Based upon the Court's review of the parties' submissions,² the Court in its discretion adheres to its prior inclination expressed at the December 10, 2019 conference. (See 12/10/19 Tr., 13-CV-09244 ECF No. 308, at 21 ("How I'm inclined at the moment is – how I'm leaning is 120 days before the close

¹ Even though Plaintiffs' Motion was made in both 15-CV-03278 and 13-CV-09244, and contains the caption of both actions, it was not filed by Plaintiffs on the 13-CV-09244 docket. Similarly, Plaintiffs' reply memorandum also was not filed on the 13-CV-09244 docket. This Order pertains to both actions.

² In addition to the Plaintiffs' Motion, the Court has reviewed Takeda's Opposition Memorandum (Opp. Mem., 13-CV-09244 ECF No. 310; 15-cv-03278 ECF No. 185) and Plaintiffs' reply memorandum. (Reply, 15-CV-03278 ECF No. 186.)

of discovery . . .".) However, in order to avoid any prejudice to Plaintiffs, Plaintiffs shall be permitted to seek an extension of the current fact discovery deadline as set forth below.

Accordingly, the Court hereby ORDERS, as follows:

1. No later than October 1, 2020, Takeda shall advise Plaintiffs in writing whether Takeda will rely on an advice of counsel defense.
2. If Plaintiffs can show good cause why they cannot complete discovery within the current court-imposed deadline due to the belated disclosure of documents previously withheld on attorney-client privilege grounds, Plaintiffs may seek an extension of the deadline on this basis alone.

SO ORDERED.

DATED: New York, New York
 January 11, 2020



STEWART D. AARON
United States Magistrate Judge